

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96813

June 10, 2010

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

OAHU

DENIAL OF REQUEST FOR CONTESTED CASE HEARING BY  
ATTORNEY RICHARD GRONNA ON BEHALF OF BERNARD MORRY

Attorney Richard D. Gronna submitted a written petition for a contested case hearing on behalf of Bernard Morry concerning the non-renewal of his mooring permit at the Ala Wai Small Boat harbor (Exhibit A). We request that the Board deny the petition for a contested case hearing based on a lack of standing.

BACKGROUND:

On April 10, 2001, Bernard Morry ("Petitioner") was sent a Conditional Offer of Available Berth for a "B" Category slip. On April 18, 2001, Bernard Morry accepted the offer of an available berth. Mr. Morry secured a mooring permit and a principal habitation permit that expired on April 18, 2002. Mr. Morry renewed his mooring permit and the principal habitation permit every year prior to his annual renewal date through April 17, 2010.

Historically, DOBOR had mailed out courtesy mooring permit renewal reminder letters which informed permittees of the permit expiration date and the renewal requirements. This courtesy letter was sent out via certified mail – return receipt requested to every permittee statewide. The mooring permit renewal notices were sent out as a courtesy and were not required by law.

On September 18, 2009, DOBOR sent out a letter to all permittees statewide that stated that as a cost saving measure, DOBOR would discontinue sending out monthly mooring permit renewal notices since the cost to send out these notices was over \$10,000 each year. The letter stated that in lieu of the renewal notices, the mooring permit expiration date would continue to be written on the billing statement that the permittee received each month. All Oahu harbors also posted the notice in the harbor informing the permittees of the change.

## DISCUSSION:

A contested case is defined as “a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.” Hawaii Revised Statutes §91-1. A contested case is required if a statute or rule governing the activity in question mandates a hearing prior to the administrative agency’s decision-making, or if a hearing is mandated by due process. *Bush v. Hawaiian Homes Com’n*, 76 Haw. 128, 134, 870 P.2d 1272, 1278 (1994). Thus, a particular petitioner has standing if stated in a statute or rule or if the petitioner has a property interest entitled to due process protection.

Petitioner’s petition requests relief from the “unreasonable termination of Petitioner’s mooring permit and principle habitation permit at the Ala Wai Small Boat Harbor.” The petition does not identify a statute or rule that mandates a hearing in this situation. DOBOR is also unable to identify any statute or rule that requires a hearing in this situation. As such, Petitioner’s entitlement to a contested case rests on the identification of a property interest which is entitled to due process protection.

The petition fails to identify any existing property interest which Petitioner has in his prior mooring permit or principle habitation permit. Contrary to the characterization in the petition, DOBOR did not terminate Petitioner’s mooring or principle habitation permits. Those permits terminated automatically as a result of the failure of Petitioner to renew the permits prior to expiration.

Hawaii Administrative Rules (HAR) §13-231-5 states that the Department may issue or renew a use permit for up to, but not exceeding, one year. This provision further states that “[u]pon expiration of the period stated therein, the permit and all rights of the permittee thereunder shall automatically terminate.” When Petitioner failed to renew his mooring permit prior to the expiration date, all of Petitioner’s rights automatically terminated. There is no interest that exists that may be renewed. Petitioner does not have a property interest that is entitled to due process protection.

Similarly, Petitioner cannot show an existing property interest in a principle habitation permit. HAR §13-231-26(a) provides that a “vessel owner who holds a valid regular mooring permit issued by the department authorizing the owner to moor the owner’s vessel in Ala Wai or Keehi boat harbor may use that vessel as a place of principal habitation.” The issuance of a principle habitation permit is contingent on also holding a regular mooring permit. Upon the expiration of Petitioner’s regular mooring permit, Petitioner no longer had a right to a principle habitation permit.

There are no statutes or rules that require that Petitioner be afforded a contested case nor does Petitioner have a property interest that is entitled to due process protection. Petitioner does not have standing that would require the Board to hold a contested case in this matter. Based on the above, DOBOR asserts that Petitioner is not entitled to a contested case hearing.

RECOMMENDATION:

That the Board deny the petition for a contested case hearing filed by Richard Gronna on behalf of Bernard Morry based on lack of standing.

Respectfully submitted,



Edward R. Underwood  
Administrator

Attachment: Exhibit A

APPROVED FOR SUBMITTAL:



Laura H. Thielen  
Chairperson

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Petitioner BERNARD MORRY

BEFORE THE DEPARTMENT OF LAND AND NATURAL RESOURCES

FOR THE STATE OF HAWAI'I

BERNARD MORRY,	)	Contested Case No. _____
	)	
Petitioner,	)	
vs.	)	PETITION FOR RELIEF
	)	
DIVISION OF BOATING AND	)	
OCEAN RECREATION DIVISION,	)	
DEPARTMENT OF LAND AND	)	
NATURAL RESOURCES, STATE OF	)	
HAWAII,	)	
	)	
Respondent.	)	
	)	
_____	)	

**PETITION FOR RELIEF**

Petitioner BERNARD MORRY, by and through his undersigned Attorney, hereby alleges and avers the following:

**Preliminary Statement**

This Contested Case matter seeks relief from, *inter alia*, unreasonable termination of Petitioner's mooring permit and principal habitation permit at the Ala Wai Small Boat Harbor (hereinafter "Ala Wai") and from other injuries flowing therefrom.

Exhibit A

### **Jurisdiction**

1. The above-entitled State Agency has jurisdiction, *inter alia*, Hawaii Administrative Procedures Act and Hawaii Administrative Rules Title 13 Subtitle 11.

### **Parties**

2. Petitioner BERNARD MORRY (hereinafter “MORRY”) at all material times herein was a resident of the Ala Wai Small Boat Harbor, Honolulu, in the State of Hawaii.

3. Respondent DIVISION OF BOATING AND OCEAN RECREATION  
DIVISION,  
DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII  
 (“DOBOR”) at all material times herein was an agency of the State of Hawaii with responsibilities that include the care and maintenance of the Ala Wai, staff and employees therein, and ....

### **Facts**

4. At all relevant times herein, DOBOR issued MORRY for seven (7) consecutive years a boat mooring permit and principal habitation permit to moor the sailing boat “Rachelle” at the Ala Wai.
5. MORRY’s principal place of residency is the Rachelle moored at the Ala Wai.
6. DOBOR issued the boat mooring permit and principal habitation permit annually.

7. Each year through 2009, approximately 90 days before the termination of the boat mooring permit and principal habitation permit DOBOR provided notice to MORRY through certified U.S. Mail the mooring permit and principal habitation permit were due for re-issue.

8. In 2010, DOBOR did not provide MORRY notice through certified U.S. Mail the mooring permit and principal habitation permit were due for re-issue.

9. DOBOR did not inform MORRY that DOBOR would no longer provide notice regarding mooring permit and principal habitation permit.

10. MORRY is a 71 year old male on a fixed income, has medical issues including depression and memory difficulties, and regularly takes doctor prescribed medication.

11. On or about April 27, 2010, the Ala Wai staff notified MORRY that mooring permit and principal habitation permit have been canceled for failure to timely re-issue.

12. Thereafter, MORRY sought relief from Ala Wai, DOBOR, and DLNR personnel without success.

### **Claims**

13. Petitioner asserts a protected interest in the mooring permit and principal habitation permit, and that DOBOR failed to provide reasonable notice to the termination of that interest as required by, *inter alia*, administrative rule and/or custom and practice.

14. Petitioner asserts that DOBOR and its staff abused their discretionary powers authorized within Hawaii Administrative Rules by denying MORRY a waiver allowing late re-issue of the mooring permit and principal habitation permit.

**Relief**

Petitioner prays for the following relief:

- a) Re-issue to MORRY the mooring permit and principal habitation permit at the Ala denied in April 2010.
- b) During the pendency of this contested case, allow interim relief for MORRY to continue residing at the Ala Wai in the RACHELLE moored in slip #722, at reason moorage rates.
- c) All other relief just and reasonable.

DATED: Honolulu, Hawaii, May 17, 2010

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RICHARD D. GRONNA

Attorney for Petitioner  
BERNARD MORRY